

HENRY PORTER
GEORGE BOGREN
YAK-TAT KWAAN, INC.

IBLA 83-505

Decided June 18, 1984

Appeal from a decision of the Alaska State Office, Bureau of Land Management, approving conveyance of lands selected under the Alaska Native Claims Settlement Act to Chugach Natives, Inc. AA-13286.

Affirmed.

1. Alaska Native Claims Settlement Act: Conveyances: Regional Conveyances

Pursuant to the 1982 Chugach Natives, Inc., Settlement Agreement, the proviso of sec. 11 of P.L. 94-204 shall be included in any conveyance of lands to Chugach Natives, Inc., in the Icy Bay regional deficiency withdrawal area. A conveyance to that corporation which is not made expressly subject to such proviso will not be disturbed where it appears that the land at issue was not within the deficiency withdrawal area.

APPEARANCES: David P. Wolf, Esq., Anchorage, Alaska, for appellants;
Dennis J. Hopewell, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Henry Porter, George Bogren, and Yak-Tat Kwaan, Inc., 1/ appeal from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated and published February 11, 1983, 2/ approving conveyance of lands selected under the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. §§ 1601-1628 (1982), to Chugach Natives, Inc. (CNI). Selection application AA-13286 was filed by CNI on June 17, 1977, for certain lands in the Cape Yakataga, Alaska area pursuant to section 14(h)(8) of ANCSA, 43 U.S.C. § 1613(h)(8) (1982).

Appellants contend in this appeal that the full provisions of section 11 of P.L. 94-204, 43 U.S.C. § 1613 note (1982), should "be set forth

1/ Yak-Tat Kwaan, Inc., is the village corporation for Yakutat.

2/ The decision was published at 48 FR 6413 (Feb. 11, 1983).

in any conveyance to Chugach Natives, Inc., as an additional item no. 4 under the section of the conveyance which says "The grant of the above-described land shall be subject to." Section 11 of P.L. 94-204 provides:

The boundary between the southeastern and Chugach regions shall be the 141st meridian: Provided, That the Regional Corporation for the Chugach region shall accord to the Natives enrolled to the Village of Yakutat the same rights and privileges to use any lands which may be conveyed to the Regional Corporation in the vicinity of Icy Bay for such purposes as such Natives have traditionally made thereof, including, but not limited to, subsistence hunting, fishing and gathering, as the Regional Corporation accords to its own shareholders, and shall take no unreasonable or arbitrary action relative to such lands for the primary purpose and having the effect, of impairing or curtailing such rights and privileges. [Emphasis in original.]

BLM did not make the conveyance expressly subject to those terms in its decision. Instead, it mentions section 11 in connection with only one easement, the Cape Yakataga Airstrip, as follows:

(67) Cape Yakataga Airstrip, an easement two hundred fifty (250) feet in width and five thousand (5,000) feet in length for an existing airstrip located in Secs. 22 and 23, T. 21 S., R. 17 E., Copper River Meridian. In furtherance of Section 11 of Public Law 94-204, 89 Stat. 1145, 1149, the shipment of fish by Natives who are shareholders of Yak-Tat-Kwaan, Inc., and their children who qualify as "Natives" as that term is defined in ANCSA, and who hold valid set net permits from the State of Alaska is authorized on the existing adjoining apron and parking area at the current level of use.

Appellants assert that through this reference in the airstrip easement, BLM has affirmatively indicated that the Cape Yakataga area is subject to section 11 and, therefore, request inclusion of the stipulation as an express provision in the conveyance.

Section 11 was enacted to establish the boundary between the southeastern and Chugach regions. While the result was to set the boundary at the 141st meridian, this action would preclude the Natives of Yakutat from areas traditionally used by them. Accordingly, section 11 afforded them the opportunity to continue such use. In the legislative report for the bill which would become P.L. 94-204, H.R. Rep. No. 94-729, the U.S. House of Representatives included a letter from the Department of the Interior, stating that: "[W]e construe this provision [section 11] to be self-executing, with the rights and obligations therefrom flowing between the two Regions and conferring no obligation upon the Department to write this language into patents issued pursuant to ANCSA." 1975 U.S. Code Cong. & Ad. News 2376, 2435-36. Conveyances under ANCSA are subject to valid existing rights, 43 U.S.C. § 1613(g) (1982), and, thus, this conveyance to CNI is subject to any rights recognized by section 11 of P.L. 94-204. There is nothing in the statute, however, which compels express inclusion of this term in the conveyance.

[1] However, paragraph 13(c) of the "1982 Chugach Natives, Inc., Settlement Agreement" (hereinafter referred to as Settlement Agreement) between CNI and the Department of the Interior provides that: "The proviso of section 11 of Public Law 94-204 shall be included in any conveyance of lands to CNI in the Icy Bay regional deficiency withdrawal area." This agreement was signed by the Secretary of the Interior on January 7, 1983. We have found nothing in the record to indicate that the lands in this conveyance are within the Icy Bay deficiency withdrawal. Indeed, the lands involved in this appeal were selected by CNI and withdrawn for conveyance under section 14(h)(8) of ANCSA, 43 U.S.C. § 1613(h)(8) (1982), which authorizes the Secretary to withdraw and convey to the regional corporations lands outside the areas withdrawn under 43 U.S.C. § 1610 (1982). Deficiency withdrawals, on the other hand, are made pursuant to 43 U.S.C. § 1610(a)(3)(A) (1982) which provides, in pertinent part, that:

If the Secretary determines that the lands withdrawn by subsections (a)(1) and (2) hereof are insufficient to permit a Village or Regional Corporation to select the acreage it is entitled to select, the Secretary shall withdraw three times the deficiency from the nearest unreserved, vacant and unappropriated public lands.

The distinction in the status of the lands was recognized in the Settlement Agreement. Thus, the lands at issue at Cape Yakataga were listed for conveyance under 43 U.S.C. § 1613(h)(8) (1982), while the lands at Icy Bay were listed for conveyance under 43 U.S.C. § 1611(c) (1982) (Settlement Agreement 14, 21). We conclude that the land at issue was not within the deficiency withdrawal area. Thus, it does not follow from the reference to section 11 of P.L. 94-204 in the airport easement reservation that conveyance of the lands in the Cape Yakataga area requires inclusion of the proviso of section 11. In any case, as stated by counsel for BLM, the rights and privileges identified in section 11 are private rights which appellants may assert against CNI regardless of whether they are expressly recognized in the conveyance.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Gail M. Frazier
Administrative Judge

